

APPENDIX “A”

UNITED STATES OF AMERICA v. STONYBROOK LAND, LLC

CONSENT DECREE

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1. On February 2, 2011, a consultant for Stonybrook Land, LLC (the "Defendant"), with the Defendant's consent, submitted a report to the United States Army Corps of Engineers ("the Corps of Engineers") entitled "Final Wetland Mitigation Plan, Proposed Stonybrook Land, LLC, Wetland Mitigation in the Town of Hoosick, Rensselaer County, New York, for Impacts from Residential Development Activities in the Town of Grafton, Rensselaer County, New York" (the "HMP"). Through the HMP, the Defendant proposed to establish predominantly forested wetlands and to preserve in perpetuity the wetland establishment area, existing wetlands, and an upland buffer at a site located on Farmers Inn Road in Hoosick, Rensselaer County, New York (the "Mitigation Site"), all to mitigate for impacts to waters of the United States as set forth in an April 7, 2006 Corps of Engineers Clean Water Act authorization.

ACCEPTANCE OF MITIGATION PLAN

2. The United States hereby accepts the HMP, provided the HMP is carried out as submitted and is in compliance with the following special conditions. This acceptance modifies the April 7, 2006 Corps of Engineers authorization, replacing Special Condition (B) thereof.

SPECIAL CONDITIONS – MITIGATION CONSTRUCTION

3. The Defendant shall accomplish required compensatory mitigation through the successful establishment of at least 0.6 acre of predominantly forested wetlands, along with the preservation in perpetuity of the wetland establishment area, 4.4 acres of existing wetlands, and a 2.4 acre upland buffer, for a total of 7.4 acres of preserved lands (the "Preservation Site"), as described in the HMP and as depicted on the drawing entitled, "Map Delineating Wetlands As Flagged On Lots 1 & 2, East Meadow Subdivision, Owned by Brian L. and Yvonne F. Boll," prepared by David J. Bolster, and dated June 9, 2010, with the mitigation details added onto that drawing by Kurt Weiskotten on February 2, 2011. (Attached as Appendix "C" to the Consent Decree).

4. The Defendant shall ensure that the newly established wetlands meet the federal wetland technical guidance and indicators outlined in the following documents, or in any subsequent versions of these documents that become effective during the monitoring period identified in Paragraph 16 below: (a) U.S. Army Corps of Engineers, 2011, Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Northcentral and Northeast Region, (Version 2.0) ed. J.S. Wakeley, R.W. Lichvar, C.V. Noble and J.F. Berkowitz, ERDC/EL TR-12-1, Vicksburg, MS: U.S. Army Engineer Research and Development Center; and (b) Environmental Laboratory,

1987, Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, US Army Engineer Waterways Experiment Station, Vicksburg, MS.

5. Through the duration of the monitoring period identified in Paragraph 16 below, the Defendant shall ensure that all proposed mitigation plantings have an 85% survival rate and the established wetland areas affected by the compensatory mitigation shall have an 85% coverage rate of hydrophytic plants (those with a regional indicator status of FAC, FACW, or OBL as outlined in the document, Lichvar, R.W. 2012. The National Wetland Plant List. ERDC/CRREL TR-12-11. Hanover, NH: U.S. Army Corps of Engineers, Cold Regions Research and Engineering Laboratory, or current approved plant list). The Defendant shall also ensure that the vegetation in riparian areas does not consist of more than a total of 5% areal coverage, and that the vegetation in the wetland mitigation areas does not consist of more than a total of 5% areal coverage of common reed (*Phragmites australis*), purple loosestrife (*Lythrum salicaria*), reed canary grass (*Phalaris arundinacea*), Japanese knotweed (*Polygonum cuspidatum*), Tartarian honeysuckle (*Lonicera tartarica*), Eurasian milfoil (*Myriophyllum spicata*), or other invasive species.

6. The Defendant shall install appropriate erosion and sediment controls, as determined by the Corps of Engineers, and shall fence off all existing wetlands and other sensitive ecological areas during construction of the wetland mitigation, so as to prevent equipment and personnel from entering those areas. All protective fencing and erosion and sediment controls shall be maintained in effective operating order, as determined by the Corps of Engineers, during the course of construction, and shall not be removed until all reseeded areas are vegetated and stabilized.

7. The Defendant shall ensure that all synthetic erosion control devices and fencing, which are intended for temporary use during construction of the mitigation, are completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade over time, may be used as permanent measures, or if used temporarily, may be abandoned in place.

8. The Defendant shall ensure that all excess excavated or fill material is disposed of in upland areas, and is stabilized so that it cannot re-enter any waters of the United States.

SPECIAL CONDITIONS – MITIGATION IMPLEMENTATION SCHEDULE

9. In 2011, acting through Braymer Mountain, LLC (Braymer), an affiliated corporation, the Defendant purchased the site where the HMP is to be performed, and where resources are to be preserved, in fee.

10. Utilizing a form approved by the Corps of Engineers prior to execution, the Defendant, through Braymer, shall ensure that a Declaration of Restrictive Covenants is imposed upon the 7.4 acre Preservation Site, to guarantee its preservation for wetland and wildlife resources. Within sixty (60) days of entry of this Consent Decree, the Defendant shall ensure that said Declaration is executed and recorded with the Clerk of Rensselaer County, New York. The Defendant shall provide the Corps of Engineers, at the Watervliet, New York address set forth in Section IX of the Consent Decree, a copy of said Declaration, as executed and recorded with the Clerk of Rensselaer County, within forty-five (45) days of recording.

11. The Defendant shall install at least one groundwater monitoring well and at least one staff gauge at the Mitigation Site, within thirty (30) days of completion of grading.

12. The Defendant shall submit to the Corps of Engineers, at the Watervliet, New York address set forth in Section IX of the Consent Decree, as-built drawings and at least six (6) photographs of the Mitigation Site, within thirty (30) days after completion of grading. This submission shall consist of field-surveyed drawings, at 1-inch equals fifty (50) feet scale, with one-foot contours and appropriate spot elevations, and will show the locations of the submitted photographs, monitoring well and staff gauge.

13. The Defendant shall complete all grading, planting and seeding required by the HMP, by October 31, 2013, and shall notify the Corps of Engineers, in writing at the Watervliet, New York address set forth in Section IX of the Consent Decree, within ten (10) days after such completion. This provision is subject to modification by the Corps of Engineers, upon written request of the Defendant should the Corps of Engineers determine in its sole discretion that weather conditions warrant modification.

14. The Defendant shall deposit \$10,000.00 in escrow within fifteen (15) days of completion of required grading, planting and seeding, so as to secure funding for subsequent mitigation requirements. The Defendant shall engage an escrow agent and use a form of escrow agreement approved by the Corps of Engineers, and shall notify the Corps of Engineers at the Watervliet, New York address set forth in Section IX of the Consent Decree that the deposit has been made, within ten (10) days of the deposit.

SPECIAL CONDITIONS – FUTURE REQUIREMENTS

15. Except as may be required by the existing power line easement, the Defendant and Braymer shall ensure that no mowing of the Mitigation site occurs.

16. The Defendant shall monitor mitigation success, at a minimum, through a period ending on October 31, 2023. The Defendant shall provide to the Corps of Engineers, at the Watervliet,

New York address set forth in Section IX of the Consent Decree, two copies of reports on the then-current status of the mitigation activities no later than October 31, 2014, 2015, 2016, 2018, 2020 and 2023. All data for the reports must be collected between April 15 and October 15 in the same year the report is submitted, unless otherwise specified below. If the Corps of Engineers determines that the success criteria outlined in paragraphs 3 through 5, above, have not been met for at least three consecutive reporting years, this monitoring and reporting period will be extended and the Defendant shall continue to submit monitoring reports every year until the Corps of Engineers determines that the success criteria have been met for three consecutive reporting years. The Corps of Engineers must notify the Defendant prior to receipt of the next monitoring report should the Corps of Engineers determine that the success criteria have not been met. The Defendant's responsibility to complete the required mitigation will not be considered fulfilled until it has demonstrated compensatory mitigation project success and has received written verification of that success from the Corps of Engineers. The Corps of Engineers will respond promptly to a request for such written verification, but in no case later than one hundred eighty (180) days after submission of the written request. If the Corps of Engineers does not respond within one hundred eighty (180) days then the compensatory mitigation is deemed successful.

17. All reports submitted in compliance with the above Paragraph 16 shall include the following at a minimum:

- a. A list of dominant plant species, along with their estimated frequency and percent areal cover in each vegetative stratum (i.e. tree, shrub, and herbaceous) for each cover type throughout the Mitigation Site;
- b. No fewer than six (6) photographs showing all representative areas of the Mitigation Site, taken at least once each year during the period between June 1 and August 15;
- c. A Corps of Engineers-approved wetland delineation data sheet for all representative areas of the Mitigation Site;
- d. A drawing outlining the extent and listing the acreage of each cover type of wetlands and the acreage of any open water area within the Mitigation Site;
- e. Well or gauge data showing water elevations within the Mitigation Site, recorded twice per month during April through September of each year;
- f. A written description of conditions at the Mitigation Site, including quantitative and qualitative data and observed usage by fish and wildlife, indicating whether the

functions proposed in the established wetlands, as stated in HMP report are being achieved; and

g. A remedial plan, if necessary, outlining all practicable steps taken or proposed to be taken to ensure the success criteria outlined in paragraphs 3 through 5 above are met, and the functions to be established are achieved, by the specified due date of the next monitoring report.